



Innovative Payments Association
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July 22, 2021

Submitted via E-Mail at: regs.comments@federalreserve.gov

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington D.C. 20551

Re: Notice of Proposed Rulemaking
[Docket No. R-1748, RIN 7100-AG15]

Dear Ms. Misback:

This letter is submitted to the Board of Governors of the Federal Reserve System (the "**Board**") on behalf of the Innovative Payments Association ("**IPA**"),¹ in response to the Notice of Proposed Rulemaking concerning Debit Card Interchange Fees and Routing issued by the Board on May 7, 2021 and published in the Federal Register on May 13, 2021 (the "**Proposed Rule**").² The Proposed Rule seeks to amend Federal Reserve Board Regulation II ("**Regulation II**"), which implemented the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank Act**"). In particular, the Proposed Rule seeks to clarify that the requirement under Regulation II that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions and to further clarify the requirements that Regulation II imposes on debit card issuers to ensure that at least two unaffiliated payment card networks have been enabled for debit card transactions.

The IPA appreciates the opportunity to submit comments to the Board for its consideration on this important topic. The Proposed Rule presents a number of highly complex issues with the potential to significantly impact several areas of the payments industry. For this reason, and as described more fully below, we urge the Board to further consider the various potential impacts of its Proposed Rule as it continues in its rulemaking process. In particular, we ask that the Board further consider the Proposed Rule's potential impacts on competition in the marketplace, the compliance burdens it may place on differently situated providers, and on the potential for the Proposed Rule's requirements to increase the presence of fraud in ecommerce transactions and make adjustments to the proposal accordingly to minimize such impacts and burdens. We further

¹ The IPA is a trade organization that serves as the leading voice of the electronic payments sector, including prepaid products, mobile wallets, and person-to-person (P2P) technology for consumers, businesses and governments at all levels. The IPA's goal is to encourage efficient use of electronic payments, cultivate financial inclusion through educating and empowering consumers, represent the industry before legislative and regulatory bodies, and provide thought leadership. The comments made in this letter do not necessarily represent the position of all members of the IPA.

² 86 Fed. Reg. 26189 – 26195 (May 13, 2021).



request that the Board provide sufficient time for industry participants to implement whatever changes the Board ultimately makes as part of any final rule.

We urge the Board to more fully consider the Proposed Rule's impact on competition in the marketplace

The Dodd-Frank Act and Regulation II were first issued in 2011 with a goal of, among other things, promoting competition for debit transactions in the marketplace. The results of the Dodd-Frank Act and Regulation II in meeting this goal can be seen in the remarkable growth payments services have experienced in the intervening ten years. The prepaid and fintech debit account industry – of which many IPA members are involved as issuers, program managers, processors, and other service providers – has seen especially rapid growth in this time period, thereby benefiting both consumers and businesses who have access to more products and choices, and this evolution has taken place in compliance with the Dodd-Frank Act and Regulation II and, notably, the common understanding of how the requirements and provisions of Regulation II apply.

Currently, the Proposed Rule's discussion of its likely impact on competition is limited to a conclusory statement that, because the Proposed Rule applies to all issuers regardless of size, it is unlikely to have an impact on competition.³ Our members are concerned that this analysis does not go far enough given that changes to Regulation II, even ones that only make "clarifications" or "revisions" according to the Proposed Rule, have the potential to significantly alter the payments industry and, therefore, should only be made after careful consideration of all the potential ramifications of such a change. To this end, we urge the Board to further consider, analyze, understand, and transparently communicate the impact its clarifications may have the payments industry and the general public, and only make adjustments to the regulation that are necessary to carry out its stated objectives to avoid disrupting payment system participants and competition to the extent possible.

In particular, we urge the Board to consider the ways that the Proposed Rule affects competition in the provision of electronic banking services among large and small debit networks and financial institutions of all sizes and the availability of such services to different classes of consumers, particularly low income consumers. We note that, during the COVID-19 pandemic, consumers more than ever found themselves turning to innovative payments solutions to meet their financial service needs, including to help them with their day-to-day finances. Accordingly, we steadfastly believe that any result that would lead to less consumer choice via fewer payment products and services in the marketplace should be avoided and would not be beneficial to the payments industry or to the American consumer.

³ *Id.* Fed. Reg., 26493 (discussing the Board's obligation under Section 904(a) of the Electronic Fund Transfer Act to prepare an analysis of the economic impact of its Proposed Rule, including a consideration of the Proposed Rule's effect on competition).



The impact of the Proposed Rule on industry participants may vary from company to company, with some companies better prepared to respond to the Proposed Rule than others

We also urge the Board to engage in additional analysis of the compliance challenges and burdens the Proposed Rule may place on industry participants. In brief, the Board's proposal requiring issuers to enable two unaffiliated networks for every geographic area, every merchant, and every type of transaction could potentially have an impact on every party in the payments value chain, including, but not limited to issuers, processors, program managers, and debit networks. In making this request, we recognize that not all industry participants will be impacted by the Proposed Rule's requirements to the same degree. Feedback from our members indicates, however, that some companies may be better prepared to respond to the Proposed Rule's requirements if the Board were to finalize its proposal in its current form than others.

In particular, we note that the requirements of the Proposed Rule may require some issuers to renegotiate existing contracts and processes in place with their network partners to the extent current network relationships do not satisfy the Board's Proposed Rule. The various debit networks differ considerably in terms of their services depending, among other things, on size, geographic location, and agreement terms.⁴ To the extent issuers need to review current network relationships, renegotiate or enter into new contracts with network partners and/or work with such partners to make additional financial investments and business process changes necessary to comply with the Proposed Rule's requirements, such actions may take a significant amount of time and effort and impose additional compliance challenges and burdens on the entities in the payments value chain that should be considered by the Board as part of its rulemaking process.

The Board should consider other potential negative impacts from its Proposed Rule, including increases in fraud

In addition to performing additional analysis and consideration of the Proposed Rule's impact on market competition and industry participants, we urge the Board also to consider other potential significant issues including, most notably, potential increases in fraud stemming from the accelerated transition to online commerce during the COVID-19 pandemic, which could harm both payment providers and interfere with the payment experience for the customer.

⁴ As the Board itself has acknowledged, not all networks have the same capability and thus many financial institutions covered by the Proposed Rule should consider this a significant factor when it comes determining the appropriate length of time needed by covered institutions to comply with any final rule.



We note that instances of fraud are much higher for card-not-present transactions than they are for in-store purchases,⁵ and the increase in ecommerce transactions during the COVID-19 pandemic has only further underscored the greater risk of fraud in ecommerce transactions. Managing and preventing fraud in a card-not-present environment takes significant resources, expertise, investment in cybersecurity, and time, and the industry as a whole has made significant investments into these areas. Some of our members are concerned that the expansion of Regulation II's requirements in the Proposed Rule could compel issuers to take on additional risks on some transactions above what they are normally comfortable due to the infrastructure needed to support a robust fraud prevention program, which if not appropriately considered in any rulemaking, may have the unfortunate result of increasing fraud, harming both industry participants as well as consumers.

The Board should remove the blanket requirement on financial institutions to support future technological capability from the Proposed Rule

One particular area of concern our members have shared with the Proposed Rule stems from the Board's proposed requirement that issuers support the enablement of at least two unaffiliated payment card networks for each means of access, including any "means of access that may be developed in the future."⁶ We do not think a blanket obligation on financial institutions to support future innovation and capability is appropriate given that neither the Board nor financial institutions themselves can predict what such future innovation and capability will look like and what resources and efforts would be required of financial institutions to support them. Rather than imposing a blanket obligation on financial institutions to support any potential future technological capability, we believe the Board should address such innovations, and a financial institution's ability to support them, as they develop before making any determination on what role emerging technologies will play on the current regulatory scheme for payments.

We therefore urge the Board to remove this requirement from the Proposed Rule.

The Board should phase-in any final changes to Regulation II over a minimum two-year implementation period

Finally, given the significant impact any change to Regulation II is likely to have on the payments industry, we request that any change finalized by the Board be phased in gradually and, in any event, over a period of at least two years to give all parties in the payments value chain time

⁵ See, e.g., *A View of Payments Security: Trends, Gaps and Vulnerabilities*, Boson Consulting Group, May 29, 2018 (finding in a study commissioned by the Board that fraud has migrated in recent years from in-person transactions to remote (online) transactions); *Changes in U.S. Payments Fraud from 2012 to 2016: Evidence from the Federal Reserve Payments Study*, the Board of Governors of the Federal Reserve System, October 2018 (noting that "remote card payments fraud" is likely to be of increasing concern for the U.S. payments system moving forward).

⁶ *Id.* Fed. Reg., 26195.



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to examine and implement the new rules, including time to analyze new requirements, renegotiate contractual obligations, and implement necessary system and infrastructure changes, so that there is a seamless transition for all consumers.

Conclusion

The IPA appreciates the opportunity to submit comments to the Board on the Proposed Rule. If you have any questions on any of our comments contained in this letter, please do not hesitate to contact me at: btate@ipa.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brian Tate', is written over a horizontal line.

Brian Tate
President and CEO
IPA
btate@ipa.org